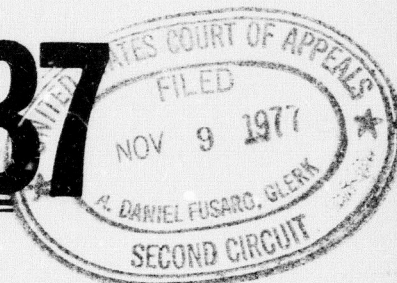


***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

11/9
Docket No. **77-6137**



In The
United States Court of Appeals

For the Second Circuit

BENEFICIAL FINANCE CO. OF NEW YORK, INC.,

Plaintiff-Appellant,

— v. —

RONALD DALLAS and MARY E. DALLAS,

Defendants,

and

UNITED STATES POSTAL SERVICE,

Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of New York

BRIEF AND JOINT APPENDIX FOR THE APPELLANT

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IN THE
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No. 77-6137

BENEFICIAL FINANCE CO. OF NEW YORK, INC.

Plaintiff-Appellant

v.

RONALD DALLAS and MARY DALLAS,

Defendants

and

UNITED STATES POSTAL SERVICE

Defendant-Appellee.

On Appeal from the United States
District Court for the Western District of New York

BRIEF FOR THE APPELLANT

STATEMENT OF THE ISSUES

There are two issues before the Court: 1) Is the United States Postal Service (USPS) immune from garnishment on the ground of sovereign immunity where Congress has waived the governmental immunity of the USPS by virtue of a "sue and be sued" clause, and where the Supreme Court has specifically held that a "sue and be sued" clause waives the sovereign immunity of a federal agency for

purposes of garnishment; and 2) Is the USPS collaterally estopped from relitigating this issue on the ground that three other Circuit Courts have specifically ruled against the USPS and held it subject to garnishment proceedings?

STATEMENT OF THE CASE

On July 17, 1975, Beneficial Finance Co. of New York, Inc. (Beneficial Finance) recovered judgment against Ronald Dallas in the Supreme Court of the State of New York, Chemung County. Subsequently, an income execution was issued, directing the United States Postal Service (USPS), as the employer of the judgment debtor, to withhold and pay over to the Sheriff certain sums from the wages of said Ronald Dallas. USPS refused to honor said income execution, claiming sovereign immunity. Pursuant to a stipulation entered into between both parties in this matter, the case was removed, on a stipulated set of facts, to the United States District Court for the Western District of New York. USPS filed a motion for summary judgment in its favor finding USPS immune from garnishment, and Beneficial Finance cross moved for summary judgment in its favor enforcing the execution. On July 26, 1977, the Court held that USPS was entitled to summary judgment quashing the income execution served by Beneficial Finance and denying the cross motion of Beneficial Finance for summary judgment in its favor. On August 25, 1977, Beneficial Finance filed its notice of appeal.

POINT I

THREE UNITED STATES SUPREME COURT CASES ON THE SUBJECT OF SOVEREIGN IMMUNITY OF FEDERAL AGENCIES REQUIRE THAT USFS SHOULD BE HELD AMENABLE TO GARNISHMENT. F. H. A. V. BURR, 309 U.S. 242 (1940), IS PARTICULARLY CONTROLLING SINCE THE COURT HELD THAT A "SUE AND BE SUED" CLAUSE WAIVES GOVERNMENTAL IMMUNITY OF FEDERAL AGENCIES FOR THE PURPOSE OF GARNISHMENT.

Keifer & Keifer v. R. F. C., 306 U.S. 381 (1939), F. H. A. v. Burr, 309 U.S. 242 (1940), and R. F. C. v. Menihan Corp., 312 U.S. 81 (1941), are the three principal decisions by the United States Supreme Court on the subject of immunity of federal agencies to suit. The Court held that federal instrumentalities do not per se have immunity from suit and the judicial processes that follow therefrom. In Burr, the Court specifically held that a "sue and be sued" clause constitutes a waiver of the agency's immunity for the purpose of a garnishment suit.

In Keifer, the court dealt with the issue of whether or not the Congressional waiver of immunity, found in the legislation creating the Reconstruction Finance Corporation, was limited to contract actions and did not cover tort actions. The Court reached the initial conclusion that:

the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work.

306 U.S. at 388.

The court then rejected the argument that the term "sue and be

sued" should be restricted to suits in contract but not in tort.
Id. at 395.

The Keifer case is analagous to the case at bar in that USPS here argues that the "sue and be sued" clause should not constitute a waiver of immunity for garnishment. However, that limitation should be rejected for the same reason as indicated in Keifer. As the Court in Keifer stated:

When it chose to do so, Congress knew well
enough how to restrict its consent to suits
It did so with increasing particularity in the
successive Court of Claims Act. 10 Stat. 612;
24 Stat. 505; 28 U.S.C. §14(20), 250(1).
Id. at 395.

In other legislation, Congress has restricted the waiver of immunity contained in the clause "sue and be sued." See, 20 U.S.C. §1132(c)-2(b)(2) and 15 U.S.C. §634(b)(1) (where the Commissioner of Education and the Administrator of the Small Business Agency may "sue or be sued" but are immune from garnishment). Thus, Congress could have limited USPS' waiver of immunity if it had so intended.

The Court carried this rationale a step further in F. H. A. v. Burr, supra, where it reviewed a Michigan Supreme Court decision holding that an income execution on a state judgment was enforceable against the Federal Housing Administration. The Court, in examining the Congressional language establishing the Federal Housing Administration, found that

it must be presumed that when Congress launched
a governmental agency into the commercial world

and endowed it with authority to "sue and be sued," that agency is not less amenable to judicial process than a private enterprise under the circumstances would be.
309 U.S. at 245.

The Court went on further to state that

As indicated in Keifer & Keifer v. Reconstruction Finance Corp., supra, 306 U.S. 381 (1939) we start from the premise that such waivers by Congress of governmental immunity in case of such federal instrumentalities should be liberally construed. This policy is in line with the current disfavor of the doctrine of governmental immunity from suit as evidenced by the increasing tendency of Congress to waive the immunity where federal governmental corporations are concerned. Keifer & Keifer v. Reconstruction Finance Corp., supra. Hence, when Congress establishes such an agency, authorizes it to engage in commercial and business transactions with the public and permits it to "sue and be sued," it cannot be lightly assumed that restrictions on that authority are to be implied. . . . Clearly the words "sue and be sued" in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceedings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts. . . . To say that Congress did not intend to include such civil process in the words "sue and be sued" would in general deprive suits of some of their efficacy. Hence, in absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved to "sue and be sued" it used those words in their usual and ordinary sense.
Id. at 245-246.

Thus, the Supreme Court has clearly interpreted the clause "sue and be sued" to include garnishment proceedings.

In R. F. C. v. Menihan, supra, the Supreme Court considered the question of whether the Reconstruction Finance Corporation was liable for court costs as a result of litigation. The

Court, combining the Keifer and Burr decisions, reached the conclusion that since Congress gave no indication of an intent to endow R. F. C. with governmental immunity, no immunity could be inferred. Second, the Court applied the definition of the clause "sue and be sued" found in the Burr case by stating:

The precise point of the decision was that the words "sue and be sued" normally embrace all civil processes incident to the commencement or continuance of legal proceedings, and hence embraced garnishment as part of that process.

312 U.S. at 85.

Taking these three Supreme Court cases, it is clear that the Supreme Court has established the principle that instrumentalities of the United States Government can be subject to state court judicial processes, including garnishment.

POINT II

TITLE 39 OF THE UNITED STATES CODE PLACES THE USPS IN THE COMMERCIAL WORLD AND WAIVES SOVEREIGN IMMUNITY FROM SUIT AND GARNISHMENT PROCEEDINGS.

The main purpose of the 1970 changes in Title 39 of the United States Code (Postal Reorganization Act) was to launch the United States Post Office into the "commercial world." Congress specifically declared that the purpose of the Act was to authorize the operation of the USPS in a businesslike manner, and to make it self-supporting.

39 U.S.C. §401(1) of the Postal Reorganization Act con-

tains the same "sue and be sued" clause as can be found in the act creating the F. H. A., and pursuant to which the United States Supreme Court in F. H. A. v. Burr, held the F. H. A. subject to garnishment proceedings.

The Seventh Circuit Court of Appeals, in Standard Oil Division, American Oil Company v. John Starks, Jr. and United States Postal Service, 528 F.2d 201 (7th Cir. 1975), gave a clear analysis of the Postal Reorganization Act and reached the conclusion that garnishment proceedings are enforceable against an employee of the USPS. The Court found that the USPS had been removed from the political arena and that the Act conferred upon the United States District Court original but not exclusive jurisdiction over all actions brought by or against the USPS (30 U.S.C. §49(a)). The Court pointed out that the most important aspect of the Act was found in 39 U.S.C. §401(1), wherein Congress gave the USPS the power to "sue or be sued in its official name." This, together with the fact that Congress empowered the USPS to

enter into contracts and execute instruments; to keep its own accounts; to acquire, hold, maintain, sell and lease real and personal property; to construct, lease, and maintain buildings, facilities, equipment, etc.; to accept gifts and donations of services; to settle claims by or against it . . . (39 U.S.C. §§401(3)-(9)).

528 F.2d at 203.

led the Court to find that the USPS had been placed on an independent financial basis with all of the necessary powers and appropriations to act as a private enterprise. Id. at 203.

The Court, in Standard Oil, noted that Congress, in

enacting the Postal Reorganization Act, specifically made the consent to suit necessary in two instances only; one being the Federal Tort Claims Act, and the second being procedural matters related to suits against the United States (39 U.S.C. §409). The Court held that

the specific and isolated limitations indicate beyond doubt that the waiver to sue and be sued applied to all other litigation (citations omitted).
528 F.2d at 203.

The Court further went on to say that since Burr involved garnishment and was prior in time to the Postal Reorganization Act,

it is reasonable to assume that the Congress intended that the 'sue and be sued' clause embrace garnishment proceedings against USPS.
528 F.2d at 203.

Two additional Circuit Courts have adopted the rationale contained in Standard Oil. See, May Department Stores Co. v. Williamson, 549 F.2d 1147 (8th Cir. 1977); Goodman's Furniture Company v. United States Postal Service, ___ F.2d ___ (3rd Cir. 1977). The Court in Goodman's Furniture Company stated:

The teaching distilled from these authorities, [citing Keifer, Burr and Menihan], that Congress could . . . "by the laws creating independent agencies also waive whatever claim those agencies might make to the sovereign immunity enjoyed by the United States Government." 528 F.2d at 202, was then related by the Courts in Standard Oil to the Postal Reorganization Act and to the broad powers granted under the Act to USPS. The Seventh Circuit concluded that Congress has not extended sovereign immunity to USPS and that USPS' "sue and be sued" provision did "embrace garnishment proceedings against the USPS," and could not "support the maintenance

of sovereign immunity in . . . garnishment proceedings.

Goodman's Furniture Company, at ____.

The Court went on further to state:

We therefore join with the Seventh and Eighth Circuits in finding "no basis in law or policy for blocking [Goodman's] garnishment proceeding." In so doing, we observe that Judge Lay's box score as reported in May Department Stores Company v. Williamson, 549 F.2d at 1150 and carried as "two and zero" (Standard Oil and May Department Stores), may now be updated to "three and zero."

Id. at ____.

In May Department Stores, Judge Lay cited seven District Court opinions following the rationale in Standard Oil. May Department Stores at 1159. In addition, memorandum decisions in accord with Standard Oil have since been entered in the Tenth Circuit. See, Burger v. Starks, No. 76-169-C2 (D. Kan., February 15, 1977); General Credit Company v. Pope, No. 76-217-C (N.D. Okla., September 29, 1976); appeal pending Tenth Circuit, No. 76-2178, consolidated with No. 76-2170; and Shaffer v. Anderson, d/b/a Anderson Retirement Home, No. 716-121-C5 (D. Kan., October 27, 1976); appeal pending Tenth Circuit, No. 76-2170.

Prior to Standard Oil, the Fourth Circuit and the Tenth Circuit also showed a similar intent to allow the normal incidents of judicial process.

The Fourth Circuit has held that the Postal Service, unlike the federal government, may be charged post-judgment interest. White v. Bloomberg, 1974, 501 F.2d 1379. The court concluded that "in creating the Postal Service,

Congress used the phrase 'sue and be sued' in its normal sense." Id. at 1386. The Tenth Circuit found that the Postal Service "is just as amenable to the judicial process as is a private enterprise." Kennedy Electric Co. v. United States Postal Service, 1974, 308 F.2d 954, 960.

Colonial Bank v. Broussard, et al, D. H. Holmes, Co., Ltd. v. Washington, USPO, 403 F.Supp. 686 (E.D. La. 1975).

It is clear that the majority view follows the rationale in Standard Oil.

POINT III

THE TERM "SUE AND BE SUED" NECESSARILY INCLUDES A WAIVER OF IMMUNITY FOR GARNISHMENT PROCEEDINGS.

The decisions in Keifer & Keifer v. R. F. C., F. H. A. v. Burr and R. F. C. v. Menihan are based upon the principle that the term "sue and be sued", when used in legislation creating a governmental institutionality, waives sovereign immunity from judicial process. That conclusion, taken together with the structure of the USPS, as established in the Postal Reorganization Act, has led three Circuit Courts, and numerous District Courts, to rule that the USPS is subject to garnishment.

However, the USPS, in its memorandum of law to the District Court, attempted to show that even where the term "sue and be sued" has been used, the clause does not necessarily include a waiver of immunity for garnishment proceedings. The USPS has

attempted to support this with four theories.

First, the USPS presented cases where municipal governments were held immune from garnishment, even when the clause "sue and be sued" was used. The USPS would have the Court make a distinction between Keifer, Burr and Menihan on the one hand and Porto Rico v. Rosaly, 227 U.S. 270 (1913) and Chewning v. District of Columbia, 119 F.2d 459 (C.A. D.C. 1941) on the other. The USPS' position is inappropriate in this instance because the legislation in question in Rosaly and Chewning, which included the clause "sue and be sued", were acts creating sovereign governments. They created the governmental body, the sovereign itself, and not a governmental instrumentality such as the USPS. The basis for the decisions in Rosaly and Chewning lies in the concept that

a sovereign is exempt from suit, not because of any formal conception or absolute theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.

Kawananakoa v. Polybank, 205 U.S. 349, 353 (1907).

However, the USPS is not like the territories of Hawaii and Porto Rico because it is not a sovereign that makes the laws on which the right depends.

The Chewning case can also be distinguished from the case at bar in that while the District of Columbia may not be a territorial government such as Porto Rico or Hawaii, it is a municipality, and thus must be considered a quasi-sovereign entity. A municipal

government does not have the same structure as the USPS. There is no attempt to place municipal governments in the commercial world as private enterprises.

Second, the USPS pointed out that Congress specifically changed the F. H. A. in 1965, and that cases subsequent to said change disallowed garnishment proceedings against the F. H. A. Rather than supporting the USPS' position, the fact that Congress found it necessary to place the F. H. A. back into the executive branch of government (and subject to sovereign immunity) supports Beneficial Finance's position, because the Postal Reorganization Act, passed in 1970, removed the Post Office Department from the executive branch and placed it in the commercial world. Congress created the USPS with the same structure which was before the Court in the Burr case. Congress certainly had the opportunity, after Burr, to specifically exclude garnishment proceedings if it so intended. May Department Stores, at 1148-49.

Third, the USPS cites numerous cases and testimony relating to the fact that the Postal Reorganization Act did not completely waive sovereign immunity. For example, they show sovereign immunity concerning the location of mail boxes, the power to stop or open letters, and state and local taxation. However, Beneficial Finance has never claimed that Congress intended a complete waiver of immunity, but rather, that Congress waived immunity from suit and the normal judicial processes (including garnishment) that follow therefrom.

Finally, the USPS contends that it enjoys sovereign

immunity except for specific waivers, i.e., the Federal Tort Claims Act (36 U.S.C. §409(c)) and the Miller Act (39 U.S.C. §410(b)(4)(B)), and that it still has immunity from all other suits, including state court garnishment proceedings. Beneficial Finance contends that 39 U.S.C. §401(1) granted a waiver of immunity from all suit, including garnishment, subject to certain procedural limitations such as the Federal Tort Claims Act, and the Miller Act. These limitations do not constitute a waiver of immunity from suit, but rather limit the waiver of immunity granted in 39 U.S.C. §401(1). May Department Stores, at 1149 and n.2.

POINT IV

42 U.S.C. §659 DOES NOT RESTRICT GARNISHMENT PROCEEDINGS TO THE ENFORCEMENT OF CHILD SUPPORT AND ALIMONY PAYMENTS.

The USPS contends that the recent enactment of Public Law 93-647, 42 U.S.C. §659, supports its position and demonstrates Congress' intent to prohibit garnishment in cases not involving child support and alimony. Section '659 states:

Notwithstanding any other provision of law, effective January 1, 1975, monies (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States (including any agency or instrumentality thereof and wholly owned federal corporation) to any individual, including members of the Armed Services, shall be subject, in like manner and to the same extent as if the United States were a private person, to legal

process brought for the enforcement, against such individual of his legal obligation to provide child support or make alimony payments.

Id.

The USPS' theory has specifically been rejected in three different courts. In Iowa-Des Moines National Bank v. United States, 414 F.Supp. 1393 (W.D. Iowa 1976), the Court examined the legislative history behind §659 and found an intent to enlarge the basis for garnishment proceedings and not to restrict garnishment to only child support and alimony payments. See also, Clark Brothers Furniture Co. v. Brockett and United States Postal Service, Docket No. 76-2653 (6th Cir. 1977); United Virginia Bank/National v. United States Postal Service and Howard E. Eaves, 416 F.Supp. 581 (E.D. Va. 1976).

Section 659 is a general provision waiving sovereign immunity concerning all United States governmental agencies, instrumentalities and wholly owned federal corporations with respect to garnishment for child support and alimony. It does not imply that it is exclusive legislation, nor does it restrict other waivers of sovereign immunity separately granted by other legislation. The sovereign immunity of the United States has already been waived with respect to the USPS in the Postal Reorganization Act (39 U.S. §401).

POINT V

THE RULE OF F. E. A. V. BURR IS THAT A "SUE AND BE SUED" CLAUSE PERMITS GARNISHMENT, AND ANY DECISION CONTRARY TO THIS RULE THAT IS BASED UPON THE GOVERNMENTAL FUNCTIONS OF THE USPS AND/OR THE INCREASED INCONVENIENCE, COST AND INEFFICIENCY THAT MAY OCCUR AS A RESULT OF GARNISHMENT WOULD, IN EFFECT, OVERRULE BURR, SINCE THE IDENTICAL ARGUMENTS WERE UNEQUIVOCALLY REJECTED BY THE SUPREME COURT.

In F. E. A. v. Burr, the Court stated:

If the general authority to "sue and be sued" is to be delimited by implied exceptions, it must be clearly shown . . . that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function.
309 U.S. at 245.

The USPS seeks to use this obiter dictum by the Court in an attempt to avoid a specific holding that a "sue and be sued" clause includes garnishment. It argues that subjecting the USPS to garnishment would interfere with its governmental function by decreasing its efficiency and draining the Service's funds. This argument fails on two grounds. First, the emphasis the USPS places on its "governmental" duties is irrelevant, not only because a governmental agency is not immune from suit per se, but in addition, because the USPS' duties and powers are not purely governmental. Second, the argument that garnishment would cause serious inconvenience to a federal instrumentality was explicitly rejected by the Supreme Court in Burr, and more recently by three Courts of Appeal in Standard Oil, May Department Stores and Goodman's Furniture Company.

- A. Governmental duties do not in themselves determine whether or not a governmental instrumentality is amenable to suit. In fact, the USPS' duties and powers are not purely governmental.

Merely asserting that the USPS performs a governmental function by delivering the mail does not in and of itself bar garnishment proceedings against the USPS. All governmental instrumentalities are not immune per se from suit. See Keifer & Keifer v. R. F. C., at 388; R. F. C. v. Menihan; Sloan Shipyards v. U.S. Fleet Corp., 258 U.S. 549, 567 (1922); United States v. Lee, 106 U.S. 196, 213, 221 (1882); Standard Oil; May Department Stores; Goodman's Furniture Company. The language of the Burr decision and the overall intent of the Postal Reorganization Act are explicit in establishing the USPS' amenability to suit and judicial process. Any contrary result would nullify the "sue and be sued" clause.

In addition, the USPS' operation cannot properly be described as purely governmental. The Court, in Standard Oil stated:

Factually, USPS operations cannot be described as "exclusively" governmental. Indeed, most of its work is not governmental in nature the delivery of mail itself is not inherently an operation that must be government-operated, and in fact is not exclusively so operated today.

528 F.2d at 203.

As a basis for said statement, the Court considered the broad powers and function of the USPS, determining that many of them are not in the least bit governmental in nature.

As a factual matter, the mail is not exclusively delivered

by the USPS. The United Postal Service serves as a privately owned competitor to the USPS, nationwide. In addition, other private postal service corporations, such as Consumer Services Corp. in Ohio, Private Postal System of America in Florida, and the American Postal Corp. on the west coast are presently delivering third and fourth class mail. The mere fact that the USPS performs some governmental work and public service is thus irrelevant to the question of whether the USPS is subject to garnishment.

B. No significant interference with governmental function has been demonstrated by the USPS.

Nowhere in the stipulation as to facts (Joint Appendix, page 2a) has the USPS presented any facts relating to interference caused by garnishment proceedings. Aside from bald allegations, the USPS has failed to present any compelling argument demonstrating said interference. Standard Oil was decided in 1975, and therefore, garnishment proceedings have taken place in the Seventh Circuit since that time. However, the USPS has failed to come forth with any statistics showing "grave interference".

Although some District Court cases held that garnishment proceedings were not allowed because they would interfere with governmental function, these cases have been repudiated in later decisions reviewing the question. See Standard Oil, supra; May Department Stores, supra; Goodman's Furniture Company, supra;

Iowa-Des Moines National Bank v. United States, supra; United Virginia Bank/National v. Eaves and USPO, supra; Colonial Bank v. Broussard, et al, supra. Those courts which presumed grave interference overlooked the Supreme Court's rejection of that position in Burr, where the Court stated:

In our view, however, the bridge was crossed when Congress abrogated the immunity by this "sue-and-be-sued" clause. And no such grave interference with the federal function has been shown to lead us to imply that Congress did not intend the full consequences of what it said. Hence, considerations of convenience, cost and efficiency which have been urged here are for Congress which, as we have said, has full authority to make such restrictions on the "sue-and-be-sued" clause as seem to it appropriate or necessary.

309 U.S. at 249.

The same rationale as stated in Burr should be applied in the case at bar.

Although the USPS insists that garnishment proceedings would embroil the USPS in third party litigation and would add a new and costly burden to the USPS' responsibilities, the facts tend to prove otherwise. The USPS would have no suit to defend, no counsel to employ and no witnesses to collect and pay. Garnishment proceedings do not entail the normal preparations and incidents of a law suit. In addition, the USPS funds are not being garnished. Rather, garnishment seeks to obtain monies which are already due the garnished employee. The modern computer payroll systems now utilized by the USPS can easily handle this deduction, together with the numerous other deductions it already makes, with little more than a keypunch operation.

The USPS also raised the spectre that if the Court were

to find it subject to garnishment proceedings, it would in turn subject the USPS to all other previously protected processes. However, merely finding that the waiver of sovereign immunity contained in the Postal Reorganization Act includes garnishment does not subject the USPS to state taxes, attachments, liens and search warrants.

POINT VI

THREE DIFFERENT UNITED STATES COURTS OF APPEAL HAVE RULED AGAINST THE USPS AND HELD THE USPS SUBJECT TO GARNISHMENT PROCEEDINGS, AND THEREFORE THE USPS IS COLLATERALLY ESTOPPED FROM LITIGATING THE ISSUE OF IMMUNITY FROM GARNISHMENT.

The exact issue of whether or not the USPS is immune from garnishment proceedings has been decided in three different United States Courts of Appeal against the USPS. The Seventh Circuit Court of Appeals, in Standard Oil v. Starks, the Eighth Circuit Court of Appeals, in May Department Stores v. Williamson, and the Third Circuit Court of Appeals, in Goodman's Furniture Company v. United States Postal Service, all held that the USPS is subject to garnishment proceedings. No Court of Appeals in any Circuit has ruled in favor of the USPS on this issue. The USPS asserted the same theories in each of these three Circuits and said matters were litigated to the fullest extent.

It is a fundamental principle of jurisprudence that

issues raised in an action and conclusively determined against one of the parties may not be raised by said party in subsequent actions because of the doctrine of collateral estoppel. Furthermore, the doctrine of mutuality no longer applies because the trend in federal and state law is toward the theory that it is not necessary for the party asserting the plea to be involved in the prior action. Blonder-Tongue Laboratories, Inc. v. Univ. of Illinois Foundation, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971); Boums, Inc. v. U.S., 537 F.2d 486 (1976); Zdanak v. Glidden Co., 327 F.2d 944 (2d Cir. 1967); Bruszewski v. U.S., 181 F.2d 419 (3rd Cir. 1950), cert. denied, 340 U.S. 865 (1950); B. R. DeWitt, Inc. v. Hall, 19 N.Y.2d 141, 278 N.Y.S.2d 596, 225 N.E.2d 195 (1967); 64 Colum. L. Rev. 1141.

Judge Lay, in his concurring opinion to May Department Stores, stated:

In this sense, the case is no different than one where a plaintiff relitigates an issue in a subsequent suit against newly named defendants. See Blonder-Tongue Laboratories, Inc. v. Univ. Foundation, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1970).

May Department Stores, at 1149.

Judge Lay further noted that the government had created a wave of litigation in the federal district courts rather than appealing the Seventh Circuit decision. While admitting that the government was appealing many of those District Court decisions in an attempt to obtain a favorable opinion in some Circuit Court before seeking review from the Supreme Court, Judge Lay stated:

. . . here we are concerned with an issue of narrow statutory construction. The question is simply put: Can the Postal Service be garnished? The government litigation strategy of forum shopping is grossly outweighed by the tremendous burden and costs placed on the federal courts by its continuing relitigation of the same issue the government should not avoid review simply because it believes the Supreme Court might rule against it, or because it disagrees with the decision of a lower federal court. When it pursues such a policy it has, in my judgment, succumbed to a government of men who avow contempt for the judicial process and disregard for the law.

May Department Stores, at 1150.

The Court in Goodman's Furniture Company reviewed the decisions in Standard Oil and May Department Stores and joined with the Seventh and Eighth Circuits in finding "no basis in law or policy for blocking [Goodman's] garnishment proceeding." Goodman's Furniture Company, at _____. They noted that the score was now three and zero against the USPS. However, the USPS has continued to relitigate this issue in this case and in five other circuits. [Fourth Circuit Court of Appeals - General Electric Credit Corp. v. William E. Smith, 77-1037 and United VA Bank/National v. United States Postal Service, et al, 77-1240; Fifth Circuit Court of Appeals - D. H. Holmes Company, Ltd. v. James Washington, 75-2155; Sixth Circuit Court of Appeals - First National Bank v. Leonard C. W. Baker, et al, 76-2287 and Clark Brothers Furniture Company v. Brockett and United States Postal Service, 76-2653; Tenth Circuit Court of Appeals - Shaffer v. Anderson, d/b/a Anderson Retirement Home, 76-2170 and General Credit Company v. Pope, 76-2168].

Judge Weis, in his concurring opinion to Goodman's

Furniture Company, was outraged by the government's refusal to seek certiori by the Supreme Court or to ask Congress to change the legislation creating the USPS. Noting that two Circuit Courts had already decided against the government position prior to the Third Circuit decision, Judge Weis stated:

the detrimental effect of repetitious litigation is so apparent that the Government's policy should be thoroughly and seriously reexamined. There is much to be said for a governmental policy of either accepting the first decision by a court of appeals in a statutory interpretation case like this or securing reversal by the Supreme Court or by Congress. If the matter is not sufficiently weighty to follow the latter alternatives, that should preclude further litigation on the question.

Id. at ____.

Judge Lay and Judge Weis felt, and Beneficial Finance agrees, that the USPS should not be allowed to relitigate these issues in each circuit, in the hopes of dividing the country into "garnishment circuits" and "non-garnishment circuits."

CONCLUSION

IT IS RESPECTFULLY SUBMITTED THAT THE JUDGMENT AND ORDER APPEALED FROM IN THIS CASE BE REVERSED AND THAT THE INCOME EXECUTION FILED BY BENEFICIAL FINANCE WITH THE USPS, GARNISHING THE WAGES OF RONALD DALLAS, BE ENFORCED.

Respectfully submitted,

HILL & COOK, P.C.
Joseph A. Greenman, of counsel
Attorneys for Plaintiff-Appellant,
Beneficial Finance Co. of New York, Inc.
Office & P. O. Address
499 South Warren Street
Syracuse, New York 13202
(315) 475-8493

JOINT APPENDIX

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STIPULATION FOR REMOVAL

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

BENEFICIAL FINANCE CO. OF NEW YORK)

VS.)

CIVIL ACTION NO.)

RONALD DALLAS AND MARY E. DALLAS)

STIPULATION FOR REMOVAL

Whereas, an Income Execution was issued under the authority of the County Court, County of Chemung, New York, in the matter of Beneficial Finance Co. of New York, Inc. vs. Ronald Dallas and Mary E. Dallas, Index No. 75/1877, indicating a judgment against the defendant Ronald Dallas and an amount due of \$1,710.09 plus interest from July 27, 1976, and

Whereas, said Ronald Dallas is an employee of the Elmira, New York Post Office, and the Income Execution directs the employer to make certain withholdings in satisfaction of the subject debt, and

Whereas, the United States Postal Service contends that it is exempt from garnishment, attachment and execution of employees' wages in satisfaction of private debt pursuant to its sovereign immunity, and

Whereas, the United States Postal Service contends that it is exempt from garnishment, attachment and execution of employees' wages in satisfaction of private debt pursuant to its sovereign immunity, and

Whereas, the plaintiff and the United States Postal Service wish the action to be removed to the United States District Court for a determination of the issue upon agreed set of facts.

Therefore, it is hereby stipulated and agreed by and between George V. Cook, Esquire, attorney for the plaintiff, and Gerald J. Houlihan, Assistant United States Attorney, representing the United States Postal Service, as follows:

(1) That service of the subject Income Execution on the United States Postal Service is accepted as of the date of the service thereof.

(2) That the subject action be transferred and removed to the United States District Court under authority of Title 39 USC Sec. 409(a), for a determination of the issue as to whether the United States Postal Service is immune from income execution for the satisfaction of private debt.

SIGNED AND EXECUTED THIS 15 DAY OF February, 1977.

George V. Cook PC
499 South Warren St.
Syracuse, New York 13202
Attorney for Plaintiff

Gerald J. Houlihan
Gerald J. Houlihan
Assistant U. S. Attorney

STIPULATION AS TO FACTS.

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

BENEFICIAL FINANCE CO. OF NEW YORK)

VS.)

CIVIL ACTION NO.)

RONALD DALLAS AND MARY E. DALLAS)

STIPULATION AS TO FACTS

George V. Cook, Esquire, attorney for the plaintiff, and the United States Postal Service by its attorney, the United States Attorney for the Western District of New York, hereby stipulate and agree as to the following facts:

(1) The United States Postal Service has had served upon it an Income Execution issued in the County Court, County of Chemung, New York, and captioned as follows:

Beneficial Finance Co. of New York, Inc. vs.
Ronald Dallas and Mary E. Dallas, Index No. 75/1877. A copy of the Income Execution is attached hereto.

(2) The Income Execution indicates that a judgment was entered against the defendant Ronald Dallas in an action in the Chemung County Supreme Court on July 17, 1975 in the original amount of \$1,600.70, and shows an amount due of \$1,710.09 plus interest from July 27, 1976.

(3) The Income Execution directs the United States Postal Service as the employer of the judgment debtor to withhold and pay over to the Sheriff certain sums from the wages of the said Ronald Dallas.

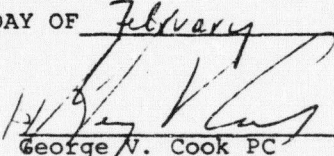
(4) The said judgment debtor, Ronald Dallas, is an employee of the United States Postal Service, being employed at the Elmira, New York Post Office.

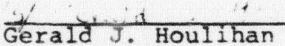
(5) The United States Postal Service is established as an independent establishment of the executive branch of the Government of the United States pursuant to Title 39 USC Sec. 201, and claims immunity from garnishment, attachment and execution of employees' wages for private debt pursuant to its sovereign immunity.

(6) The plaintiff does not concede to the claimed immunity.

(7) Accordingly, the parties have stipulated to the removal of the subject action to and request a determination of the issue by the United States District Court for the Western District of New York under the authority of 39 USC Sec. 409(a).

SIGNED AND EXECUTED THIS 15 DAY OF February, 1979.


George V. Cook PC
499 South Warren St.
Syracuse, New York 1202
Attorney for Plaintiff


Gerald J. Houlihan
Assistant U. S. Attorney

INCOME EXECUTION.

COUNTY COURT

COUNTY OF

CHENANGO

OFFICIAL FINANCE CO. OF NEW YORK, INC.

Index No. 75/1877

Plaintiff(s) — Judgment Creditor(s)
against

RONALD DALLAS AND FRANK A. DALLAS

INCOME EXECUTION

Defendant(s) — Judgment Debtor(s)

whose last known address is
445 Schuyler Avenue
Elmira, New York

The People of the State of New York

TO THE SHERIFF OF ANY COUNTY, GREETING:

In an action in the Chenango County Supreme Court a judgment was duly entered in the office of the clerk of said court in favor of the Judgment Creditor(s) and the particulars regarding said judgment are:

Entry Date	Original Amount	Amount Due	Plus Interest From
July 17, 1975	\$ 1,300.70	\$ 1,710.09	July 27, 1976

The Judgment was recovered against all above captioned defendant(s); ~~except~~

and a transcript of the judgment was filed on July 17, 1975 with the Clerk of Chenango County.

WHEREAS, this execution is issued against Ronald Dallas Judgment Debtor whose last known address is 445 Schuyler Ave., Elmira, New York, and Judgment Debtor is receiving or will receive from United States Post Office

whose address is Elmira, New York 14901 more than \$85.00 per week, to wit \$ unknown to be paid in amounts of \$ each:

Title or Position

Bureau, Office, Dept. or Subdivision

Soc. Sec. and/or Pension No.

Badge No.

091-30-2516

DIRECTIONS TO SHERIFF: NOW, THEREFORE, WE COMMAND YOU, (1) to serve a copy of this Income Execution upon Judgment Debtor within 20 days after it is delivered to you; (2) if you are unable to do so, or if Judgment Debtor fails to pay the instalments pursuant to this Income Execution for a period of 20 days, you shall levy upon the monies Judgment Debtor is receiving or will receive from the Employer, by serving the Employer with a copy of this Income Execution, indorsed to indicate the extent to which paid instalments, if any, have satisfied the aforesaid judgment and (3) if this Income Execution remains unsatisfied, in whole or in part because you are unable to find the Employer within your jurisdiction, you shall return this Income Execution to Judgment Creditor's attorney, endorsed to indicate the extent to which paid instalments, if any, have satisfied the judgment, and said attorney(s) or judgment creditor may deliver this execution so indorsed to the sheriff of any county in which the Employer may be found, AND THE SHERIFF OF SUCH COUNTY IS HEREBY COMMANDED to levy upon the money that the judgment debtor is receiving or will receive from the Employer by serving a copy of this execution so indorsed upon the Employer personally within such sheriff's county, AND THE EMPLOYER IS HEREBY COMMANDED to withhold and pay over to the sheriff as hereinafter set forth.

DIRECTIONS TO JUDGMENT DEBTOR: YOU ARE HEREBY NOTIFIED AND COMMANDED IMMEDIATELY, to commence paying to the Sheriff or Marshal delivering a copy of this Income Execution to you, instalments amounting to 10% of any and all salary, wages or other income, including any and all overtime earnings, commissions or other irregular compensation received or hereafter to be received from your Employer and to continue paying such instalments until the judgment together with interest thereon and the fees and expenses of this Income Execution are fully paid and satisfied and if you fail to do so this Income Execution will be served upon the Employer by the Sheriff.

DIRECTIONS TO THE EMPLOYER: YOU ARE HEREBY COMMANDED, to withhold and pay over to the Sheriff delivering a copy of this Income Execution to you, instalments amounting to 10% of any and all salary, wages or other income, including any and all overtime earnings, commissions or other irregular compensation now or hereafter becoming due to Judgment Debtor, such amount not exceeding the maximum part of the aggregate disposable earnings subject to garnishment pursuant to Title III of the Consumer Credit Protection Act, until the aforesaid judgment together with interest thereon and the fees and expenses of this income execution are fully paid and satisfied.

Dated July 27, 1976 /s/ George V. Cook

GEORGE V. COOK

The name signed must be printed beneath

HILL & COOK, P. C.

Attorney(s) for Judgment Creditor(s)
Office and Post Office Address499 South Warren Street
Syracuse, New York 13202
Telephone (315) 475-8493

ENDORSEMENTS:

Date and time execution received:

Index No. 10/10/76

COUNTY Court

County of CHEMUNG

BENEFICIAL FINANCE CO. OF
NEW YORK, INC.

Plaintiff(s)—Judgment Creditor(s)
against

RONALD DALLAS and HARRY L.
DALLAS

443 Schuyler Ave.
Elmira, New York

Defendant(s)—Judgment Debtor(s)

Income Execution

Sheriff of Chemung County

Levy and collect as within directed

\$ 1,710.09

with interest from July 27, 1976

besides your fees, etc.

HILL & COOK, P. C.

Attorney(s) for Judgment Creditor(s)
499 South Warren Street
Syracuse, New York 13202
Telephone (315) 475-8493

Ex 1710.09
Int 17.10
Rec 3.00
Fees 86.51
Total 1818.70

Installments paid to _____

(date)

have satisfied the judgment to the extent of

\$ _____ principal and

\$ _____ interest.

Sheriff of _____

County

Returned to the judgment creditor or his attorney

on _____ because of

(date)

inability to find garnishee in the county.

Sheriff of _____

County

NOTICE OF MOTION.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BENEFICIAL FINANCE COMPANY OF
NEW YORK,

Plaintiff

Civil No. 77-198

-vs-

NOTICE OF MOTION

RONALD and MARY DALLAS,

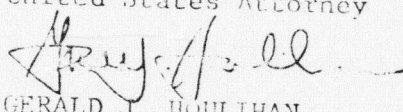
Defendants.

SIR:

PLEASE TAKE NOTICE that the undersigned will bring the annexed motion on for hearing before this Court at the U.S. Courthouse, 100 State Street, Rochester, New York on June 27, 1977 at 10:00 a.m. or as soon thereafter as counsel can be heard.

Dated: June 21, 1977
Rochester, N.Y.

RICHARD J. ARCARA
United States Attorney

By: 
GERALD J. BOULTHAM
Assistant United States Attorney

CO: GEORGE V. COOK, P.C.
499 So. Warren Street
Syracuse, New York 13202
Attorney for Plaintiff

RECEIVED JUN 22 1977

MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BENEFICIAL FINANCE COMPANY OF
NEW YORK,

Plaintiff

Civil No. 77-198

-vs-

MOTION FOR SUMMARY JUDGMENT

RONALD and MARY DALLAS,

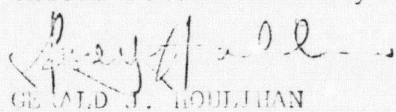
Defendants

The United States Postal Service moves, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, for summary judgment in its favor on the grounds that no genuine issue as to any material fact exists, and that plaintiff is entitled to judgment as a matter of law.

Dated: June 21, 1977
Rochester, N.Y.

RICHARD J. ARCARA
United States Attorney

By:


GERALD J. HOULIHAN
Assistant United States Attorney

RECEIVED JUN 22 1977

CROSS MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BENEFICIAL FINANCE CO. OF NEW YORK, INC.	)	
	)	Civil No. 77-198
Plaintiff	)	
-vs-	)	CROSS MOTION FOR
	)	SUMMARY JUDGMENT
RONALD DALLAS and MARY E. DALLAS	)	
	)	
Defendants.	)	

Beneficial Finance Co. of New York, Inc., pursuant to Rule 56-a of the Federal Rules of Civil Procedure, moves for summary judgment in its favor on the grounds that no genuine issue as to any material fact exists, and that plaintiff, Beneficial Finance Co. of New York, Inc., is entitled to judgment as a matter of law.

Dated: July 7, 1977
Syracuse, New York

HILL & COOK, P.C.
Attorneys for Plaintiff
Office & P. O. Address
499 South Warren Street
Syracuse, New York 13202
(315) 475-8493

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BENEFICIAL FINANCE CO. OF NEW YORK, INC.) Civil No. 77-198
)
) AFFIDAVIT IN OPPOSITION
 Plaintiff) TO MOTION FOR SUMMARY
) JUDGMENT BY THE UNITED
 -vs-) STATES POSTAL SERVICE
) AND IN SUPPORT OF MOTION
 RONALD DALLAS and MARY E. DALLAS) FOR SUMMARY JUDGMENT BY
) BENEFICIAL FINANCE CO.
 Defendants.) OF NEW YORK, INC.
)

1. I am an associate of the firm of Hill & Cook, P.C., for the plaintiff. I am familiar with the facts of this case and make this affidavit in support of motion by plaintiff for judgment in its favor, and in opposition to motion for judgment made by the United States Postal Service.

3. The issue of whether the United States Postal Service from plaintiff's income execution has been transferred court pursuant to a "Stipulation for Removal" dated February a copy of which is attached hereto and made a part hereof.

4. The question before the Court is whether or not the United States Postal Service is immune to garnishment procedures affecting judgments entered in State Courts. The law, as shown in the memorandum of law to be submitted by the plaintiff, clearly

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDG-
MENT BY THE U.S. POSTAL SERVICE AND IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT BY BENEFICIAL
FINANCE CO. OF NEW YORK, INC.

shows that United States Postal Service employees are subject to State Court garnishment proceedings. In fact, the only Circuit Court decision on point holds that there is no basis in law or policy for blocking garnishment of postal employee wages. See, Standard Oil Division, American Oil Company v. John Starks, Jr., and United States Postal Service, 528 F.2d 201 (7th Cir. 1975).

WHEREFORE, plaintiff, Beneficial Finance Co. of New York, Inc., prays that the Court grant summary judgment in favor of the plaintiff and against the defendants, Ronald and Mary E.¹ Dallas and the United States Postal Service, enforcing the income execution filed against said defendants, and for such other and further relief as may be just, proper and equitable.

/s/ Joseph A. Greenman
Joseph A. Greenman

Sworn to before me this
July 7, 1977.

Notary Public

JUDGMENT.

JUDGMENT ON DECISION BY THE COURT

NY 32 (2-63)

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 77-198

BENEFICIAL FINANCE COMPANY OF NEW YORK, INC.

vs

RONALD DALLAS, MARY E. DALLAS and
UNITED STATES POSTAL SERVICE

JUDGMENT

This action came on for ~~trial~~ (hearing) before the Court, Honorable Harold P. Burke
United States District Judge, presiding, and the issues having been duly ~~tried~~
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the United States Postal Service is entitled
to summary judgment in its favor adjudging that the United States Postal
Service, the statutory successor of the former Post Office Department
(Section 4 of the Postal Reorganization Act, 39 U.S.C. 201h, 1970),
retains the former departments unquestioned general sovereign immunity
from commercial garnishment proceedings, and quashing the income
execution served by Beneficial Finance Company of New York, Inc., which
requires the United States Postal Service to garnish the wages paid
to its employee Ronald Dallas. The cross motion of Beneficial Finance
Company of New York, Inc., for summary judgment in its favor is in
all respects denied.

Dated at Buffalo, New York
of July , 19 77.

, this 26th day

JOHN K. ADAMS

JOHN K. ADAMS
Clerk of Court

RECEIVED JUL 27 1977

DECISION AND ORDER.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BENEFICIAL FINANCE COMPANY OF NEW YORK, INC.,

Plaintiff

- vs -

CIVIL 77-198

RONALD DALLAS, MARY E. DALLAS and
UNITED STATES POSTAL SERVICE,

Defendants

George V. Cook
499 South Warren
Syracuse, N.Y. 13202
Attorney for plaintiff

Gerald J. Houlihan
Assistant United States Attorney
for the United States Postal Service

FINDINGS OF FACT

1. An income execution was issued under the authority of the County Court of Chemung County, New York, in the matter of Beneficial Finance Company of New York, Inc., against Ronald Dallas and Mary E. Dallas, indicating a judgment against the defendant Ronald Dallas and an amount due of \$1710.09, plus interest from July 27, 1976.

2. Ronald Dallas is an employee of the Elmira, New York, Post Office, and the income execution directs the employer to make certain withholdings in satisfaction of the subject debt.

DECISION AND ORDER.

3. The United States Postal Service contends that it is exempt from garnishment and execution of employees wages in satisfaction of private debt pursuant to its sovereign immunity.

4. The plaintiff and the United States Postal Service wish the action to be removed to the United States District Court for a determination of the issue upon agreed set of facts.

5. It has been stipulated and agreed by and between George V. Cook, attorney for the plaintiff, and Gerald J. Houlihan, Assistant United States Attorney, representing the United States Postal Service, that service of the subject income execution on the United States Postal Service is accepted as of the date of service thereof; the subject action be transferred and removed to the United States District Court under authority of Title 39 U.S.C. Section 409(a), for a determination of the issues as to whether the United States Postal Service is immune from income execution for the satisfaction of private debt. A stipulation for removal filed and executed February 15, 1977 has been filed in this court on May 3, 1977.

6. A stipulation of facts signed February 15, 1977 has been filed with this court on May 3, 1977.

7. By motion with supporting papers filed June 23, 1977 the United States Postal Service moves for summary judgment in its favor on the ground that no genuine issue as to any material

DECISION AND ORDER.

fact exists. By cross motion with supporting papers filed June 11, 1977, Beneficial Finance Company of New York, Inc., moves for summary judgment in its favor on the ground that no genuine issue as to any material fact exists. The motions have been submitted for determination on written memoranda.

8. This is a test case which is intended to resolve the legal dispute as to whether the United States Postal Service is immune from commercial garnishment proceedings. There are now pending in the Western District of New York more than one hundred cases involving this issue. This number has been increasing at a rate of five to ten per week in recent weeks. The issue in this case is whether the United States Postal Service, the statutory successor of the former Post Office Department, (Section 4 of the Postal Reorganization Act, 39 U.S.C. 201h, 1970), retains the former departments unquestioned general federal sovereign immunity from commercial garnishment proceedings.

9. The government contends that United States Postal Service retains the same sovereign immunity as its predecessor. This is the same immunity from commercial garnishment that Congress affords to all federal agencies.

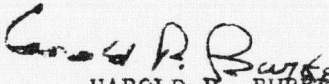
10. Congress intended to retain the traditional immunity from commercial garnishment.

11. The Postal Reorganization Act was not intended to waive the sovereign immunity of the federal postal system. To construe the Postal Reorganization Acts "sue and be sued" clause

DECISION AND ORDER.

as waiving the postal systems historical sovereign immunity from state power would be inconsistent with the fundamental purposes of the Act. Congress continues to consider the postal service to be a federal instrumentality generally immune from state power. It is hereby

ORDERED that the United States Postal Service is entitled to summary judgment in its favor adjudging that the United States Postal Service, the statutory successor of the former Post Office Department (Section 4 of the Postal Reorganization Act, 39 U.S.C. 201h, 1970), retains the former departments unquestioned general sovereign immunity from commercial garnishment proceedings, and quashing the income execution served by Beneficial Finance Company of New York, Inc., which requires the United States Postal Service to garnish the wages paid to its employee Ronald Dallas. The cross motion of Beneficial Finance Company of New York, Inc., for summary judgment in its favor is in all respects denied.


HAROLD P. BURKE
United States District Judge

July 25, 1977.

Affidavit of Service

Records and Briefs
For State and Federal Courts
Established 1881

313 Montgomery Street
Syracuse, New York 13202
(315) 422-4805

Russell D. Hay/President
Everett J. Rea/General Manager

Spaulding Law Printing

November 8, 1977

Re: **Beneficial Finance Co. of New York, Inc. vs. Ronald Dallas, et al.**

State of New York)
County of Onondaga ss.:
City of Syracuse)

EVERETT J. REA,

Being duly sworn, deposes and says: That he is associated with Spaulding Law Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of **HILL AND COOK, P.C.**

Attorney(s) for **Plaintiff-Appellant**

two (2) and Joint Appendix.
(s)he personally served ~~three~~ copies of the printed ☐ Record ☒ Brief ~~XXXXXX~~
of the above entitled case addressed to:

RICHARD J. ARCARA
United States Attorney
U. S. Courthouse
100 State Street
Rochester, New York 14614

Att: **Gerald J. Houlihan, Esq.**
Assistant U.S. Attorney

☒ By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York, on November 8, 1977.
☐ By hand delivery

Everett J. Rea
.....
EVERETT J. REA

Sworn to before me this 8th day of November, 1977.

Donald C. Guerin
.....
Notary Public
Commissioner of Deeds

cc: **Joseph A. Greenman, Esq.**